



U.S. Department of Justice

Environment and Natural Resources Division

BSG:AML
DJ No. 90-11-3-1620/2

Environmental Enforcement Section
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August 8, 2002

EPA Region 5 Records Ctr.



VIA FEDERAL EXPRESS

Clerk's Office
United States District Court for the Southern District of Ohio
Rm. 324
Potter Stewart Courthouse
100 E. 5th St.
Cincinnati, OH 45202

Re: Dow Chemical, et al. v. Acme Wrecking et al.
Dow Chemical, et al. v. Sun Oil Co., et al.
United States v. Aeronca, Inc. et al.
Consolidated Civil Action Nos. C-1-97-0307; C-1-97-0308; C-1-01-439

Dear Clerk:

Enclosed for filing please find the original and two copies of a Stipulation and Protective Order regarding Confidentiality for Documents related to the Martin Clarke Entities. If you could please return one filed-stamped copy in the enclosed, self-addressed, stamped envelope, I would appreciate it.

Thank you for your prompt attention to this matter.

Sincerely,

Annette M. Lang
Trial Attorney

cc: All Counsel on the Service List
Craig Melodia

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

THE DOW CHEMICAL CO., <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action Nos.
)	C-1-97-0307; C-1-97-0308
ACME WRECKING CO., INC., <u>et al.</u> ,)	(Consolidated Actions)
)	
Defendants.)	C-1-01-439
)	(Transferred Action)
THE DOW CHEMICAL CO., <u>et al.</u>)	Judge Weber
)	
Plaintiffs,)	
)	
v.)	
)	
SUN OIL COMPANY, d/b/a SUNOCO)	
OIL CORP., <u>et al.</u> ,)	
)	
Defendants.)	
)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	
AERONCA, INC., <u>et al.</u>)	
)	
Defendants.)	
)	

**STIPULATION AND PROTECTIVE ORDER REGARDING CONFIDENTIALITY
FOR DOCUMENTS RELATED TO THE MARTIN CLARKE ENTITIES**

Plaintiff, United States of America, on behalf of the United States Environmental Protection Agency ("U.S. EPA"), Contribution Plaintiffs (The Dow Chemical Co., Ford Motor Co., Anchor Hocking Corp., General Motors Corp., King Wrecking Co., Inc., and OXY USA

Inc.), and the undersigned Defendants Martin E. Clarke, Clarke's Incinerators, Inc. and Clarke Container, Inc. (collectively hereinafter referred to as "Executing Defendants") hereby stipulate that discovery in this case may involve the production of business and personal documents that may contain information which may be entitled to confidential treatment. In view of this stipulation, the Court finds that good cause exists for the issuance of an order requiring limited disclosure of such information, and that entry of this Order is appropriate pursuant to Federal Rule of Civil Procedure 26(c). Consequently it is hereby **ORDERED**:

1. For purposes of facilitating discovery of this action, Executing Defendants shall submit to the Plaintiffs documents containing information which may be entitled to confidential treatment. Such documents shall be handled in accordance with the terms of this Stipulation and Protective Order Regarding Confidentiality (hereinafter referred to as "Protective Order").

2. As used in this Protective Order, the term "confidential information" means information produced by the Executing Defendants which may be entitled to confidential treatment under F.R.C.P. 26(c).

3. For any documents for which the Executing Defendants raise a claim of confidentiality, the Executing Defendants shall stamp the first page of each such document with the words "Confidential Information" or "Confidential."

4. Plaintiffs or Contribution Plaintiffs may seek relief from this Protective Order with respect to any or all of the documents that Executing Defendants designate as "Confidential Information" or "Confidential" upon motion to the Court setting forth its/their reasons for challenging Executing Defendants' designation(s). Until the Court rules upon such a motion,

Plaintiffs and Contribution Plaintiffs shall comply with the terms of this Order as to the documents designated as confidential.

5. Counsel for Plaintiffs and the Contribution Plaintiffs who obtain documents bearing the stamp of "Confidential Information" or "Confidential" shall not disclose or permit disclosure of this information to any other person, except in the following circumstances:

a. Disclosure may be made to employees of Plaintiffs, Contribution Plaintiffs, or their counsel who have responsibility for assistance in the litigation of this action. Any employee to whom disclosure is made shall be advised of, and be subject to, the provisions of this Protective Order. Employees do not include persons, firms, or corporations engaged by Plaintiffs, Contribution Plaintiffs, or their counsel on a contract basis, who shall be subject to the requirements of subparagraph (b) of this Paragraph.

b. Disclosure may be made to consultants, witnesses, experts, or employees of experts (hereinafter referred to collectively as "Expert(s)") employed or otherwise engaged by Plaintiffs, Contribution Plaintiffs, or their counsel to assist in this litigation. Prior to disclosure to any Expert, the Expert must agree to be bound by the terms of this Protective Order by executing the Confidentiality Agreement attached hereto as Attachment 1.

6. Plaintiffs, Contribution Plaintiffs, their counsel and any other person subject to this Protective Order, who obtains any documents subject to this Protective Order shall take all necessary and appropriate measures to maintain the confidentiality of the information, shall share such information only with persons authorized to receive it pursuant to this Protective Order, and shall retain the information in a secure manner. Except as provided in Paragraph 5, no other person shall be permitted access to the information.

7. Any person who obtains access to documents subject to this Protective Order may make copies, duplicates, extracts, summaries, or descriptions of the information or any portion thereof **only** for the purpose of litigation in this matter. All copies, duplicates, extracts, summaries or descriptions shall be subject to the terms of this Protective Order to the same extent and manner as original documents obtained which are subject to this Protective Order.

8. Any unauthorized disclosure of documents produced under this Protective Order shall not result in a waiver of any claim of confidentiality.

9. Any documents that are stamped "Confidential Information" or "Confidential" subject to this Protective Order that the Plaintiff, Contributions Plaintiffs or Executing Defendants seek to file with the Court shall be filed in sealed envelopes or other appropriate sealed containers on which shall be marked the caption of this litigation, an indication of the nature of the contents of such sealed envelope or container, the word "CONFIDENTIAL INFORMATION," and a statement substantially in the following form:

"This envelope contains documents that are subject to a Protective Order in this case, and shall not be opened except by order of the Court."

10. Plaintiff, Contribution Plaintiffs, Executing Defendants, defendants' counsel, and executing non-parties to this Protective Order agree that this Protective Order, governing the handling of documents produced by Executing Defendants, shall be a binding agreement,

enforceable as such upon execution. The parties agree to submit this Stipulation and Protective Order to the Court for approval and entry as a Protective Order.

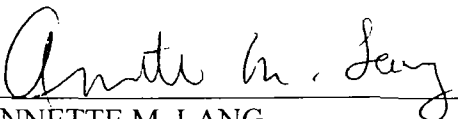
It is so Ordered this _____ day of _____ 2001.

Judge Weber
United States District Judge

Stipulation and Protective Order Regarding Confidentiality
In the Matter of Dow Chemical Co., et al. v. Acme Wrecking Co., Inc. et al
Case Nos. C-1-07-0307; C-1-97-0308; C-1-01-439 (S.D. Ohio)

Date: _____

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OF COUNSEL:

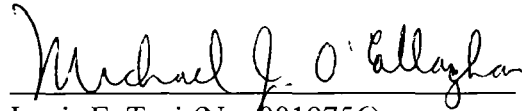
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U.S. Environmental Protection Agency
Region 5
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Stipulation and Protective Order Regarding Confidentiality

In the Matter of Dow Chemical Co., et al. v. Acme Wrecking Co., Inc. et al

Case Nos. C-1-07-0307; C-1-97-0308; C-1-01-439 (S.D. Ohio)

Date: _____

 *w/permission
A.M.L.*

Louis E. Tosi (No. 0019756)

Michael J. O'Callaghan (No. 0043874)

Shumaker, Loop & Kendrick

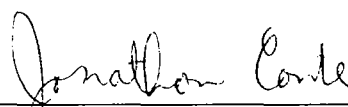
41 S. High Street, Suite 2210

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Counsel for Contribution Plaintiffs

Phone: 614 463-9441

Date: _____

 *w/permission
A.M.L.*

Jonathon Conte (No. 0061249)

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PNC Center

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Cincinnati, OH 45202

Counsel for Martin E. Clarke,

Clarke Container, Inc. and

Clarke's Incinerators, Inc.

Phone: 513 362-8703

ATTACHMENT 1

CONFIDENTIALITY AGREEMENT

In the Matter of Dow Chemical Co., et al. v. Acme Wrecking Co., Inc. et al
Case Nos. C-1-07-0307; C-1-97-0308; C-1-01-439 (S.D. Ohio)

The undersigned is currently working at _____ which is located at _____. The undersigned has been employed or otherwise engaged as an employee of, or a consultant or contractor, to the following company located at the following address:

Company Name: _____

Address: _____

The undersigned hereby acknowledges that he/she has read the foregoing Stipulation and Protective Order ("Protective Order") executed by the attorneys of record for certain parties in the action presently pending in the U.S. District Court for the Southern District of Ohio, entitled Dow Chemical Co. et al v. Acme Wrecking Co. Inc. et al. The undersigned understands the terms thereof, and agrees, upon threat of penalty of contempt, to be bound by such terms. The undersigned understands that disclosure of documents that have been produced by the Executing Defendants may cause harm to the competitive position of the Executing Defendants. Accordingly, among other responsibilities, the undersigned shall only share such information with persons specifically authorized to receive the information pursuant to the Protective Order, shall retain the information in a secure manner, and shall use such information only for the purposes authorized by the Protective Order. The undersigned understands that the pledge of confidentiality under this Agreement continues after the lawsuit is over.

DATED: _____

SIGNED: _____

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of August, 2002, I caused a true copy of the foregoing proposed Stipulation and Protective Order Regarding Confidentiality to be served by first class mail, postage prepaid on the following counsel of record:

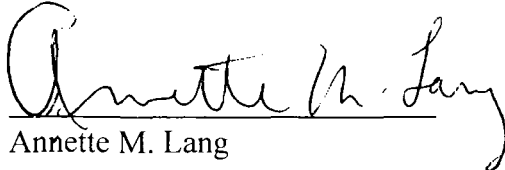
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Annette M. Lang